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Para: DANIEL LIM <DANIEL.LIM@eeoc.gov>

8 de diciembre de 2016, 7:24

December 7, 2016.

Mr. Daniel Lim
State and Local Coordinator
Equal Employment Opportunity Commission

Requesting Substantial Weight review,

This is Claudia Jimenez Cabrera personal Representative of Jose Cabrera. I am sending you this letter because I need to open the final decision for determination from North Dakota Department of labor and human rights case number EEOC#32F-2015-00190. I am requesting from you the substantial weight review for this matter, because I provided it all type of evidence that I'll send you attached with this document.

This case includes two investigator since September 2015

September 2015.

Vicki Slavik

701-328-3716

Compliance Investigator

North Dakota Department of Labor and Human Rights

vslavik@nd.gov

July 2016

Sheena Cole

Compliance Investigator

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Jose Cabrera died after work accident at Pyramid Corporation Alexander North Dakota new name PTW Energy Service (<http://us.ptwenergy.com>). Jose's died at Midwest City Hospital Oklahoma new name Alliance Health Center.

I have two more cases open with the department of labor.

1-Jose's paycheck wasn't right, Pyramid own me more that \$20,000

2-Workers compensation case because his accident on November 27

3- Mercy Hospital for discrimination- Department of labor close this case because time was over 6 months when I open the complain about denied for service.

I am including copy of the medical records who provided evidence that Jose Cabrera was sick since January, Jose was spitting blood, every one at the work place can see his sickness from January 5, the first day of work after Christmas at the work place. Jose was obligated to work even with this situation and special letter from the doctors to the company, evidence that was provided by Jose to Pyramid. I will included a copy of the pay check which show that he was there even when his situation was severe. No one should be at work in the condition to protect the sick person. I can demonstrated that his situation just get worse, and know I am widowed with 7 and 12 years old boy who need their father a lot.

Evidence 1- Accident Report was created with false date and time. The accident was November 27 around 8 AM. According with Att call log my husband was working on the 26, because phone call was make during break time only. On the 27 I can see that he has several phone call.

Evidence 2- I have his iPhone, I have the picture that he took this date about his big purple mark in his buttocks . iPhone provide the technology of time and date. According with his phone picture he took on 27, after he returned from drug test. Worker Compensation Insurance was not offered or mention about this benefit from the employees. As you can see Jose and I have a good phone communication and he was telling me everything in details.

Jose asked from help to see the doctor the date of the accident, Jose hasn't idea about this benefit that by law avery company over 3 or 5 employees should have. Jose didn't have a copy about his right and didn't know about it. I understand that North Dakota is not required to have a contract to work but the workers should know at least at the moment of the incident about his right with the advice of his supervisor or foreman, help should be offer and any medical need, no only drug test.

Evidence 3- No information was provided about his right and coverage under the workers compensation insurance. I have the opportunity to speak with Mrs. Amy Oster requesting several time a copy about worker compensation rights to the workers and Contract. Her answer was that under the North Dakota law that isn't necessary. I still need a copy of this important document who should be provided to Jose since the first day of work around July 15, 2014.

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In the determination of letter includes.

Summary of respondent's response.

1- According with the information provided by Pyramid report. Jose had a work incident in November the 26, 2014 which cause him to slipped and fell from three feet above ground because he was working in dangerous situation. *he was climbing over oil tank in a compressor building approximately 3 (Jose told me that was more that 4) off the ground install tubing when he slipped and fell hitting his butt on a pipe valve.*

Complain about this situation-

1- Pyramid only send Jose for a drug test with other worker no to a doctor's office when Jose requested to Mr. Clint Maxwell (SUPERVISOR) and Lauro Maravilla his foreman, this last two knew that this incident was very bad and they should help Jose to visit the doctor office.
2- He was told to go back to his trailer because Mr. Maxwell told him that Pyramid did want any responsibility- Mr. Maxwell lying when he said that he didn't said that. Because I was telling the true I provided to the investigator 3 phone number for 3 workers that knew that all this happened. Their name are Mr, Lauro Maravilla, Mr, Clint Merida, Mr. Maxwell

3- The copy of the incident report from pyramid don't allow Jose to check the information on the incident report or sign his name, also didn't provide a copy for Jose's records.

4- The incident report should be modify and should allow worker to agree or disagree to seek medical attention and have a copy of it.

Pyramid answers-

- Jose didn't wish to seek medical treatment and didn't wish to take any time off from work
My concern about this is why North Dakota Department of Labor agree with Pyramid's information when Pyramid don't have any evidence that he requested or didn't requested medical attention. According with the company responsibilities, should follow a situation like this with a medical report in order to provide care to the workers, if safety if the priority.

- Pyramid didn't and would not tell Mr. Cabrera or any employee, that it did not want responsibility for accident or could not come to work.

Priority is safety -

a) To be free of responsibility through drug test. Jose was taken to a drug test because they told him that they want to be free or any responsibility. If safety is the priority why this accident happened.
b) According with Pyramid Accident Report they suggested to work next time with a better safety using the ground instead climb in an oil tank which everyone knows that oil can cause many accidents because the texture and components it included

The answer from NDOL is that I don't have evidence of his request -

1- Evidence with document.

a) If I have to provided a document with the medical request, I'll say that I don't have this because this company don't have this type of document

b) if this document exist that should help their workers. Every worker have access to what the company provided.
c) Workers can't make their own document and make the company to sign it.

2- Evidence with other employees. I provided 3 names with 3 phone numbers. I don't have the workers answers in NDOL report.

3-Evidence with medical consequences.

Consequences about this situation to Jose's health condition:

- Jose was spitting blood by mouth all the time, few week later he had a diagnostic of Atypical Pneumonia at Mercy Hospital but was related to the accident

-The worse condition that he had after this incident which cause him to die. I have a case with workers compensation about this situation.

- The urgent needed of a doctor diagnostic for this date that should help the doctor to make a better diagnostic on him, and he may survived with a good medical treatment

9 pictures taken for him when him was spitting blood. (I sent many pictures and I can send it to you)
re pictures with a huge purple mark in his buttock.

According with the medical examiner information is this type of incident have consequences such death

Information from <https://www.ok.gov/ocme/faqs.html> question number 8 Relation with accients and Pneumonia

https://mail.google.com/mail/u/0/?ui=2&ik=d6cdd06ff3&jsver=TP1aNXhKEpU.es.&view=pt&q=DANIEL.LIM%40eoc.gov&q=true&search=querv&th=159hc9eR

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Because there is often a delay, sometimes measured in years, between injury and death, it is easy to overlook an accident or other trauma which caused the condition for which the decedent was being treated when death occurred. For example, an individual who fell, broke a hip, developed pneumonia and died would require a Medical Examiner investigation because the underlying cause of the pneumonia was a fall - an accidental event. Sometimes there has not been enough time for the doctors to have diagnosed the cause of a coma or possible infectious disease.

2- On January the 8, 2015, after Jose informed the respondent he had been diagnosed with Atypical Pneumonia, he was told to return to his trailer as he could infect others.

Pyramid answer- Jose took time off because his illness

- Jose was working starting January 5, he was sick and requested transportation to visit the doctor, Jose can't drive because his truck was at SS & Motors (1204 4th Ave NE, Watford City, ND 58854 phone number (701) 444-2341. The evidence was provided to ND DOL which includes the report, the name of the person who knew that he need it because Pyramid told Jose that he had to drive by his own and the date when the truck was returned to Jose which was January the 28, after Jose requested many time while he was at Trinity Hospital because he had a rental car from Enterprise Car rental and because Pyramid told him that he need to make it by his own and should demonstrate that he can make it in order to keep his job- This last word hurt me a lot, because Jose was in a hospital for 11 days which was from January 12 to 24 and he was under medical suggestion that he should stay in his trailer and could returned to work if he was felling well. The letter was provided to Pyramid and ND DOL.

- Isn't true that he was at the hospital after January the 8, which was the only day that Pyramid provided transportation after 3 days waiting for visit the doctor, which includes January 5- January 8.
- I provided evidence to ND DOL about this visit. I have a medical record when Jose visited the hospital of Midwest City on January 1, 2015 in this date he started with few blood clot because the accident .

Pyramid say that Jose didn't work for a several weeks

- The situation was no resolved with the medication provided for the doctor on January 8.
- January 12, Jose visited another hospital in Watford City and they told him that he should go Minot ND, he call his coworkers but no one helps him
- January 12 Jose rented a car for 11 days because the company didn't help him- I provided copy of the car rental cost r 11 days. Because transportation was denied ones again.

About his illness the company always knew what was his condition.

- Jose provided the medical diagnostic on January the 8.
 - January 12, the doctor wrote two special letters which includes
- Jose doesn't have any infection or contagious problem that may cause serious problem to others. This letter was requested for Jose because he suffered discrimination from the coworkers and they told him " don't come back because we don't want any responsibility and you can infect other" All this is included in the letter and was provided to ND DOL.

Evidence.

- The doctor letter provided from Trinity Hospital is an evidence that Jose was suffering discrimination from the co workers.
- Car rental for 11 day is another evidence.
- The request that Jose did to SS & Motor of the car to be fixed to be able to work
- The towing company who help Jose to move his truck.
- Jose left everything after he knew that he can't make it by his own after Clint Maxwell told him them him doesn't want him anymore at Pyramid,
- Jose requested transportation one again to the airport but instead send him to the airport January 30, he was left in his trailer which was located in Watford City ND. That was the last day when he worked at Pyramid. No --January 2 and 3 which was when him was in the hospital. Pyramid also mention that Jose said that resigned to work which is a lie. I have the medical record for this date from Mary Mahoney Hospital.
- The situation that he had, Jose was obligated to use the transportation by his own, because no one helps him. This situation make him to lose more blood and when he came, the doctor send him to a blood transfusion because he lose a lot a blood while he was using 3 airports, his hemoglobin level was 6 half of what people should have to survive.

Consequences.

- Loss of blood
- ide bleeding increase
- ospitalization of 8 more days
- Death.

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3- Pyramid said- When he returned to work, he told his supervisor that he had been ill, but he didn't specify the nature of the illness or request any reasonable accommodation.

Jose always provided a clear information since the first visit to the doctor, which included January 8, the diagnostic for this day was atypical pneumonia. The diagnostic for January the 12 was pulmonary hemorrhage.

The doctor send two letters

- The first letter includes that Jose wasn't infectious to the co workers- Because Jose told the doctor that he was suffering discrimination
- The second included what was Jose's medical condition and when he can come back to work and specify the date that him should stay in his trailer and all the directions about medication and care.
- The doctor told Jose that the letter should help him if he needs special accommodation. Jose requested and he mention this letter but Pyramid didn't care about his condition or the doctor request.
- This letter specify that he should see the doctor again if he had worsening condition and should be use it if he was asking for accommodation like he did.
- The letter is an strong evidence of his condition and the need of special accommodation after 11 day of hospitalization but one again Pyramid didn't care about his request.
- Jose provided this letter the same day when he left the hospital.

4- Pyramid mention the Jose returned to work on January 2 and January 3- Please pay attention to false information, Pyramid should have consequences, because I can prove that he was in the hospital, this day he had blood transfusion.

Why ND DOL make this situation to be credible when isn't.

Evidence.

- 1- I provide you copy of the flight tickets
- 2-I provided you copy of the medical record for this dates.

4B- Pyramid said that Mr. Maxwell told Jose on January 3 to return to work.

- Another lie, I told you that he was in the hospital this day
- January 30, he was move it with other workers to this trailer because they told Jose that he should no be back at work ever.
- I don't understand why Mr. Maxwell did all this when he has the doctor medical report
- On January the 29 and 30 Jose was at work because he called the main office at Odessa TX and they told him to demonstrate that he can make but his own to be able to keep his job. The same with Mr. Maxwell he told Jose the same.

Evidence.

I provide you all the phone call make it by Jose which specify the amount of time that he spent with every one, which included

- Phone call to main office Odessa TX
- Many phone call to Mr. Maxwell when Jose was requesting more time to see the doctor because he needs to see the doctor again, according with his condition and what the letter said about what to do if he wan't getting any better.
- Jose was in urgent need it to see the doctor again but Pyramid didn't allow him to do that.
- January 29 and 30 Jose was outside when the temperature was 1 F, he requested accommodation and showed copy of the doctor letter.
- Jose was spitting blood- That is another evidence about his condition and I have many pictures with this blood clot in order. We can see the progress of this condition after this date when him was exposed to this extremely cold situation, the reason was only to BE ABLE TO KEEP HIS JOB AND HIS INSURANCE, jose was obligated to work on this dates. But every one saw him that he can't even stand up. that is why he was removed early and carry out as a can of trash for his co workers

5- Pyramid records do not show any request from Mr. Cabrera to work inside.

Would pyramid tell me what they have for that. is it any specific type of document that they use for this type of records or accommodation. I don't think so.

The request of accommodation was asked for Jose and he had the doctor letter which should help him if he need any accommodation. Pyramid have a copy of the doctor letter and ND DOL have a copy.

Pyramid Instrumentation & Electric at no time discriminate against Mr. Cabrera based upon his race or disability.

- a race was not a reason, why Pyramid
- Didn't provide transportation on January 5 - Jose wait until January 8
- b) Didn't provide transportation again from Williston to Minot to stay in the hospital for 11 day.
- c) Why noone call him or when to the hospital to visit him during this 11 days.

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- d) Why he have to pay to rent a car for 11 days when several workers have cars from Pyramid that should help him to be inside and outside the hospital. All the coworker knew that Jose was by him self at North Dakota.
- e) Didn't allow Jose to visit the hospital again and make him to work
- f) Why when the co workers so him losing blood by mouth didn't allow him to be inside
- g) Why Jose was removed from the work place and Pyramid told him to don't come back
- h) Why he have to come back at home by him self when some one should help him to see the doctor
- i) Why he have to died and left two little children who needs him every single day.

Jose was suffering disability and discrimination because his condition

- JURISDICTION PROCEDURES-

According with the rule of investigation procedure on title IV- It mention to establish a prima facie case to present a credible reason for this action.

Which in my understanding is enough evidence of discriminatory.

- I provided you enough written evidence which also included
- Supported evidence with photographs, medical reports and letters from doctors
- Names and phone numbers of every place that I mention in the information provided above.

I was able to demonstrate that the information provided by Pyramid isn't credible and that I have enough evidence that we the charging party are telling the true with evidence and it is credible according with all the events occurred in the period of time.

Disability Reasonable Accommodation

1- With the information provided we demonstrate that Jose was disable to stay at work.

Jose was forced stay at work place in order to keep his job and his benefit.

Jose was removed from work place January the 30

Jose wasn't at work place on February 2 and 3 as Pyramid mention that he resigned to stay at work on January 3. On this date Jose was receiving blood transfusion and died On February the 12 after he worked for pyramid from June 2014 to January 30, 2015

- Jose qualify for disability and he should stay at his trailer or he should visit the doctor after he explained Pyramid that he wasn't feeling well.

3- Jose requested accommodation

- a) when he asked for more time to visit the doctor ones again.
- b) The second request was when he asked to be inside the office if Maxwell need to see him at the work place.
- c) The third accomodation was transportation from Watford to Williston like they always did before he was sick but was denied because they believe that should be contagious and don't want any responsibility with his condition.

4- Tangible employment action and the employee will be affected.

Tangible action -Jose was removed from work on January 30, since he can't stand by his own because he was losing a lot of blood. Pyramid don't want him in the condition that he was.

Employee will be affected- He was affected because he lost his life 12 days later. The last time when he was at Pyramid was January 30, Jose died February 12

Page 5 of the determination - NDHRA- Jose was disable and this situation limit him and cause a huge impact in his life.

- He can't caring for him self, he was able to performing manual task, he had difficulties to walk and has hospitalized 2 times in 2 differents hospitals the first was for 11 days at Minot ND , the second was for 8 days at Midwest City Oklahoma.

Major life activities under NDHRA includes function of the immune system, normal cell growth, respiratory - All this function are included in details in his medical records from all the hospital I have copy of all of this health problems in the medical records, which was explained to pyramid and was included in the doctor letter- Jose was suffering also for impairment substantially

According with ADA and with the ND DOL Jose meet the definition of part a, b

Pyramid mentions that Jose didn't requested any reasonable accommodations- As I mentioned early he requested because he can't stand up or do any type of work after the hospitalization of 11 days. The letter provided from the doctor, was given the right at Jose to ask for accommodations because his medical condition where every one can see him spitting blood clot all the time but no one care about his health condition.

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The ride to the hospital- The transportation to the hospital was provide only one time on January 8, Jose work 9, 10, 11. Jose need to return to the hospital on January 12, this hospital is 2 hours away from Williston. Jose have to rent a car for 11 days. Car rental received was provided to ND DOL.

OTHER INFORMATION

My concern about this information is why ND DOL isn't take this as an accommodation request when I provided all the evidence in a full details provided by att.

An idea that what is included.

ATT call log 25, 26 and 27- Jose was trying to seek accommodation. One of the accomodation was to have the opportunity to visit the doctor office again after his 11 days of hospitalization becuae he wasn't felling well. Pyramid answer was "no" you have to come to work and show me that you can make it in order to keep your job and benefits. The full print Att Call log was provided and we have here an idea about who much time he spent trying to have a good answer.

Requesting accomodation by phone with doctor letter and instruction about his condition

to Main Office

11.45 am Odessa TX 432-580-3200- 2 minutes
11.48 am Odessa TX 432-580-3200- 22 minutes
2.42 pm Odessa TX 432-580-3200- 1 minute

To Maxwell 970 210 6222

2.34 pm

1.10 pm

1.13 pm

Accommodation about transportation request on January 29 evidence of witness.

Car pooling- Jose had transportation from Pyramid every day from Watford City to Williston ND and Alexander ND. He always left his truck in Watford City at the same place where other worker left their trucks too. One is this workers who new about this service was Clint Merida 580-775-1802. I don't have the answer after ND DOL interviewed Mr. Merida also he was not allowed to provide transportation to Jose this day under the order of Clint Maxwell and Odessa Main office.

I'll send you all the emails that I send to ND DOL since this case was open and many other documet if isn't included in the email

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